



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,170	07/01/2003	Vahid C. Saadat	USGINZ02111	5203
40518	7590	10/07/2009		
LEVINE BAGADE HAN LLP 2400 GENG ROAD, SUITE 120 PALO ALTO, CA 94303				
EXAMINER				
MENDOZA, MICHAEL G				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
10/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/612,170

Applicant(s)

SAADAT ET AL.

Examiner

MICHAEL G. MENDOZA

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 68-72 and 74-80 is/are pending in the application.
- 4a) Of the above claim(s) 78-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 68-72 and 74-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/23/2008 have been fully considered but they are not persuasive. The applicant argues that Broome et al. does not teach a fastener having a first state in which the suture is translatable through the fastener, and a second state in which the suture is restrained from translation through the fastener. The examiner disagrees. Broome et al. teaches a first state wherein 32 is translatable through 33 (fig. 14). Broome et al. also teaches a second state wherein 192 is within 33, and therefore 32 is not translatable through 33 (figs 15 and 16).

Election/Restrictions

2. Newly submitted claims 78-80 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 78 adds the limitation of the strut comprising a loop, which was not originally examined. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. The loops are exclusive characteristics of the embodiment recited in claim 78 and shown in figs. 10A and 10B. The first and second free ends are exclusive characteristics of the embodiment recited in claim 68 and shown in figs. 12A-12C. The first strut having ends and a middle section and a second strut having ends and a middle section, with the middle section of the first strut overlying the middle section of the second strut are exclusive characteristics of the embodiment recited in claim 69 and shown in figs. 13A-13D.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 78-80 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

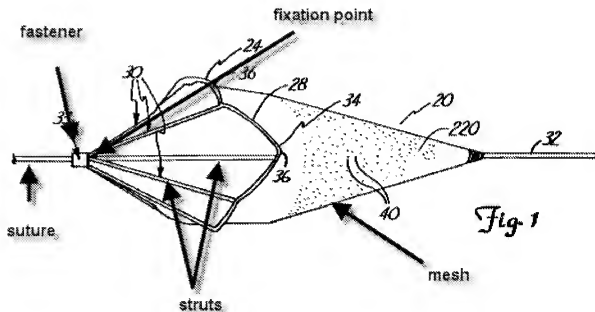
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 68 and 74-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Broome et al. 6152946.

5. Broome et al. teaches an anchor comprising: a plurality of struts (made from Nitinol, col. 5, lines 17-19) with a first end of substantially each of the struts affixed to a fixation point; a suture coupled to the fixation point, with the struts having a reduced delivery profile wherein they are substantially parallel to one another and a deployed profile where they extend at angles away from one another (see figs. 5 & 6); a fastener translatably coupled to (col.4, lines 34-35) the suture and configured to retain a tension force on the suture; and mesh/membrane (col. 4, line 28) attached to one or more of the struts.



Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 69-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broome et al. in view of Lock et al. 5709707.

8. Broome et al. teaches the claimed anchor as recited in claim 74. It should be noted that Broome et al. fails to teach a first and second strut having ends and a middle section with the middle section of the first strut overlying the middle section of the second strut. However, Lock et al. teaches an expandable device having a common

first and second strut having ends and a middle section with the middle section of the first strut overlying the middle section of the second strut. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Broome et al. in view of Lock et al. as an alternative arrangement for expanding struts.

9. As to claim 72, Broome/Lock teach the claimed invention except for a third strut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third strut, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734